IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.874 of 2006
IN
SPECIAL CIVIL APPLICATION NO.10693 OF 2006
With
CIVIL APPLICATION No.7261 of 2006

For Approval and Signature:

HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA Sd/-

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JUSTICE R.J. SHAH ADMISSION COMMITTEE FOR PROFESSIONAL COURSES - Appellant(s)
Versus
THE ASSOCIATION OF MANAGEMENTS OF GUJARAT UNAIDED ENGINEERING COLLEGES & 1 - Respondent(s)

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Appearance :
MR AD OZA FOR MR DIPAK R DAVE for Appellant(s) : 1,
MR DC DAVE for Respondent(s) : 1,
MR KAMAL B TRIVEDI, ADVOCATE GENERAL, with MS SANGEET VISHAN, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/07/2006
CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This appeal has been filed by original respondent No.1 in Special Civil Application No.10693 of 2006 challenging the judgment and order dated 19th June, 2006 of the learned Single Judge. The original petitioner is respondent No.1 herein and, for the sake of convenience, the parties shall be referred to as per their respective description in the petition.

2. The petitioner is an Association of Managements of Gujarat Unaided Engineering Colleges and Institutions. Respondent No.1 is Justice R.J. Shah Admission Committee for Professional Courses (Higher & Technical Education) while respondent No.2 is the State of Gujarat. The petitioner-Association states that out of about 22 unaided colleges in the State, 19 colleges have formed the petitioner-Association. The controversy in question is in relation to the procedure to be adopted for admission by the petitioner-Association for Academic Year 2006-2007 and hence, when the matter came up for admission hearing on 28th June, 2006, after hearing the parties in the appeal, this Court listed the appeal for final hearing

while directing the parties to maintain status-quo till then. The appeal has, accordingly, been finally heard on 29th June, 2006, though no formal order of admission had been passed. Hence, the same is made today to complete the record. ADMIT.

3. The case of the petitioner-Association is that for Academic Year 2006-2007 the petitioner was entitled to devise its own method of admissions and accordingly on 22nd September, 2005 it wrote to the Principal Secretary to Government of Gujarat for Higher & Technical Eduction and Member Secretary of the Committee. It is stated therein that the examinations conducted by the Gujarat Higher Secondary Board for the 12th Std. are well conducted and can be treated both as certifying as well as entrance test examinations. Therefore, the petitioner stated that it shall prepare merit list based on the marks obtained by the students in theory of Physics, Chemistry and Maths (and Biology in case of courses like Food Processing Technology) obtained at the Higher Secondary Examinations. The petitioner also stated so far as the students passing CBSE and ISCE from schools located in Gujarat are concerned, they would be

admitted on proportional basis and on the basis of marks scored in theory in relevant subjects at the board examinations. This communication was followed by communications dated 22nd October, 2005 and 21st February, 2006.

4. It is further the case of the petitioner that on 15th April, 2006 the office-bearers of the petitioner-Association held a meeting with Principal Secretary of Higher & Technical Education and explained as to how the petitioner-Association would be regulating the issue of admissions. That this meeting was preceded by a meeting with Commissioner of Higher Education on 31st March, 2006. Thereafter, the petitioner-Association prepared an information booklet and forwarded a copy thereof to the Director of Technical Education with copies to the Member Secretary of the Committee and Principal Secretary, Higher & Technical Education for Information.

5. On 4th May, 2006 the Committee communicated to the petitioner-Association that the action of the petitioner-Association was not adhering to the admission procedure laid down by Hon'ble Supreme Court and, therefore, the advertisements published on 30th April, 2006 as well as

application forms already distributed were required to be withdrawn. The petitioner-Association was further informed that a Common Entrance Test under the supervision of the Admission Committee may be conducted by the petitioner-Association or the petitioner-Association may adopt the marks obtained at Higher Secondary examinations and at GUJCET (Common Entrance Test conducted by the State Government) for preparing a merit list.

6. On 5th May, 2006 the petitioner-Association raised detailed objections and stated that under Article 19(1)(g) of the Constitution of India the petitioner-Association had a fundamental right and a prerogative to evolve a suitable methodology for the purposes of admissions. On 9th May, 2006 the petitioner moved the Court challenging the communication dated 4th May, 2006 issued by the Committee. After hearing the parties on 29th May, 2006 the Court recorded that the Committee was ready and willing to consider the representation of the petitioner-Association dated 5th May, 2006 and, therefore, the Committee was directed to consider such representation objectively and take an appropriate decision on or before 5th June, 2006.

7. After hearing the representatives of the petitioner-Association and considering the representation dated 5th May, 2006 the Committee came to the conclusion on 31st May, 2006 that the stand of the petitioner-Association cannot be accepted; that on the basis of the Apex Court decision the Board examination of 12 Std. could not be equated with the Common Entrance Test referred to in the judgment of the Apex Court and hence, the petitioner-Association was directed to forward a proposal to conduct a Common Entrance Test. The communication dated 31st May, 2006 also came to be challenged.

8. The learned Single Judge allowed the petition and quashed and set aside the communication dated 31st May, 2006 issued by the Committee while permitting the petitioner-Association to grant admission in the First Year of Engineering and allied courses by preparing merit list on the basis of marks obtained in the examination conducted for 12 Std. by the Higher Secondary Certificate Board. The learned Single Judge also imposed as many as eight conditions while passing the aforesaid order. It is this order which is challenged by the Committee.

9. It is an accepted fact that the State of Gujarat has conducted a Common Entrance Test (GUJCET) and most of the students appearing at the Higher Secondary Examinations have also appeared at GUJCET. The State Government, in consultation and with permission from the Committee, has evolved a methodology whereby for the purposes of government aided colleges and institutions a common merit list is to be prepared whereby 60% weightage is to be accorded to the marks obtained at the Higher Secondary Examination and 40% weightage is to be accorded to the marks obtained at GUJCET.

10. The stand of the committee in the present appeal is that the petitioner-Association may either conduct its own Common Entrance Test under supervision of the Committee, or, adopt the same basis, viz., adopted for the aided colleges by the State of Gujarat i.e. 60% weightage to marks obtained at Higher Secondary Examination and 40% weightage to marks obtained at GUJCET. The petitioner-Association on the other hand contends that by virtue of Article 19(1)(g) of the Constitution and repeated pronouncements, with special

reference to the judgment of the Constitution Bench of the Apex Court in case of *T.M.A. Pai Foundtion Vs. State of Karnataka*, (2002) 8 SCC 481, the petitioner-Association is entitled to evolve its own method of preparation of merit list for the purposes of admission and the Committee cannot dictate the terms, as the same would amount to violation of the fundamental right of the petitioner. The contention of the petitioner that the examinations conducted by the Higher Secondary Board are equivalent to a Common Entrance Test and no further test is required to be conducted is a facet of its principal stand.

11. Having heard the learned advocates appearing for the petitioner-Association and the Committee as well as the learned Advocate General for the State of Gujarat, it is apparent that the order of the learned Single Judge cannot be sustained for the reasons that follow hereinafter.

12. After the Constitution Bench of eleven judges rendered the judgment in *T.M.A. Pai Foundtion* (supra), a five judges Bench delivered a judgment in the case of *Islamic*

Academy of Education Vs. State of Karnataka, (2003) 6 SCC 697, to clarify the earlier judgment, but finding that there were some unsettled questions a Bench of seven judges was constituted and the judgment in case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors., (2005) 6 SCC 537, came to be rendered by the Apex Court. In the circumstances, though elaborate submissions were made on behalf of the petitioner-Association and certain portions of the judgment in case of *T.M.A. Pai Foundtion* (supra) were read out emphatically, this Court does not propose to enter into any detailed discussion in light of the subsequent pronouncement in P.A. Inamdar's case (supra) by the Apex Court. Suffice it to state that the contentions raised on behalf of the petitioner-Association were raised before the Apex Court in case of P.A. Inamdar (supra) and, therefore, this Court need not render any independent opinion being bound by the exposition of law made by the Apex Court.

13. In the case of P.A. Inamdar (supra) in paragraph No.27 the Apex Court formulated four questions out of which question Nos.2 and 4, which are relevant for the present purposes, are set out hereunder:

(2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether direction made in Islamic Academy for compulsorily holding entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in Pai Foundation?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?

14. In relation question No.2, it has been laid down as follows:

> “133. So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.
>
> 134. However, different considerations would apply for graduate and postgraduate level

of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

135. *Pai Foundation* has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a 'sprinkling' of such admissions, the term we have used earlier borrowing from *Kerala Education Bill*, 1957. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said

objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit *inter se* of the students so chosen.

137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration.

The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.

15. In relation to question No.4, the Apex Court has observed as follows:

"144. The two committees for *monitoring admission procedure and determining fee structure* in the judgment of Islamic Academy, are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-

exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.

145. The suggestion made on behalf of minorities and non-minorities that the same purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

146. x x x x

147. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme

> evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.
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> 148. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with *Unni Krishnan Committees* which were supposed to be permanent in nature."

16. Therefore, in the first instance, supervision by the Committee is permissible as a regulatory measure and the committee is empowered to monitor the admission procedure. The underlying purpose is to protect the interest of the student community as a whole, maintenance of required standards of professional education on non-exploitative terms in the institutions. The restrictions imposed by way of legal provisions made

by the State Legislature or the scheme evolved by the Court for monitoring admission procedure do not violate the right under Article 19(1)(g) of the Constitution of India. These are reasonable restrictions permissible in the interest of general public under Article 19(1)(g) of the Constitution. It has been categorically laid down that unless the admission procedure is regulated and controlled at the initial stage, the evil of unfair practice of granting admission would be guided by the paying capacity of the candidates and would be impossible to curb. This observation has been made while rejecting the contention that the Committee can achieve the purpose by post audit or imposing checks after the institutions have adopted their own admission procedure.

17. In so far as the admission procedure of unaided educational institution is concerned, it has been laid down that though the unaided institutions can legitimately claim an unfettered fundamental right to choose the students to be granted admission and the procedure therefor, the same is subject to the procedure being fair, transparent and non-exploitative. It is simultaneously laid down that all institutions imparting

same or similar professional education can join together for holding a Common Entrance Test satisfying the above said triple tests. It is also permissible to the State to provide a procedure for holding a Common Entrance Test to secure fair and merit-based admissions and preventing maladministration. Lastly, the Apex Court concludes that having regard to the larger interest and welfare of the student community, to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralized and single-window procedure. That till regulations are framed, the Admission Committee can oversee admissions to ensure that merit is not a casualty.

18. Therefore, even while granting the unaided institutions' fundamental right the Apex Court has, at the same time, stipulated that though the institutions are entitled to formulate their own method of admissions, same would be subject to a regulatory mechanism in the form of committee and all institutions, imparting same or similar professional education, are required to join together for holding a Common Entrance Test to satisfy the

requirement of the admission procedure being fair, transparent and non-exploitative.

19. No reason has been advanced by the petitioner-Association why the option of conducting a Common Entrance Test on its own, OR adopting the basis of 60:40 percentage of HSC marks and percentage of GUJCET is not acceptable; as to how it is detrimental ? The only contention is : right under Article 19(1)(g) of the Constitution. Needless to state, every right is coupled with a corresponding duty. In this case a duty to the students, who are going to finance the commercial venture of the members of the petitioner-Association, the students who have already taken GUJCET. Why should they suffer ?

20. The other bone of contention between the parties at this stage was in relation to their respective stands – viz. whether HSC examinations would fulfill the criterion of Common Entrance Test or is it necessary to conduct such a Common Entrance Test over and above the HSC examinations. According to the petitioner-Association, the HSC examinations themselves can be treated as Common Entrance Test, as was the practice in past, and

no further test is required. The submission on behalf of the Committee and the State is that the HSC examinations are qualifying examinations and only if a student clears the same would he become entitled to seek admission to the professional courses. That the nature of the examinations and the Common Entrance Test are different. The qualifying examinations, according to the committee and the State, are based on the traditional method while GUJCET is different in character being objective in nature to test the aptitude of a student for a professional course. It was further submitted that this being the first year of GUJCET the State and the Committee have thought it fit to assign proportionate weightage to the marks obtained at the HSC examination and GUJCET.

21. In the case of Shri Chander Chinar Bada Akhara Udasin Society & Ors. *Vs. State of J&K & Ors.*, (1996) 5 SCC 372 the necessity of holding a Common Entrance Test has been stated by the Hon'ble Supreme Court in the following words:

> "..... It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at

> the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the State level, others at the national level including the Indian School Certificate examination. The percentage secured at different examinations are bound to vary according to the standard applied by such examining bodies, which is well known. As such a common entrance examination has to be held."

22. Similarly, in the case of *Dr. Preeti Srivastava Vs. State of M.P.*, (1999) 7 SCC 120 it is laid down that

> "..... A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS Examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the MBBS Examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter

> standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS Examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. ...."

23. Thus, the need for a Common Entrance Test is to evaluate students coming from different sources by adopting a uniform criterion for judging the merit or by a common yardstick. The submission, that because there are very few students from schools in Gujarat who appear at CBSC, ISCE examinations, they can be accommodated by forming a proportional quota / percentage and Common Entrance Test is not necessary because majority of the students appear at the High Secondary Examinations conducted by the State Board, does not merit acceptance for the simple reason that once there is more than one source of qualifying examination, Common Entrance Test must be held as

laid down by the Apex Court for judging all the candidates by applying a better and uniform standard. The State is also required to adopt the same standard for the students who have passed out at CBSE or ISCE examinations. The moment there are different sources of qualifying examinations viz. different boards, there is bound to be variation in the percentage obtained at such qualifying examinations on the basis of the subjects, the courses offered, the standard of evaluation, and such other factors. Hence, to put all the students at par a Common Entrance Test is a must and the petitioner-Association cannot be heard to state that its fundamental right would be violated if it is called upon to conduct such a Common Entrance Test. In the event the petitioner-Association does not want to conduct such a Common Entrance Test it can always adopt the merit list prepared by the State and the Committee for the aided colleges and admit the students from the said merit list after counseling with the Committee. In so far as the present academic year is concerned this would be an ideal course of action considering the point of time when the controversy is brought before the Court.

24. Apart from the aforesaid pronouncement by the Apex Court there is one more reason why a Common Entrance Test is a must. In the petition, in one of the grounds raised in support of the stand of the petitioner-Association, reference has been made to the guidelines issued by the All India Council for Technical Education (AICTE) on 3rd November, 2003. The ground reads as under:

> [H] That, at this juncture, if a recourse is made to the guidelines issued by the All India Council for Technical Education on 3rd November, 2003, subsequent to the decision of the Honourable Supreme Court of India in the matter of T.M.A. Pai Foundation (supra), it would become, ex-facie, evident, beyond province of doubt, that there is no need on the part of the State to hold an another test over and above 12th Standard Examination in Science Stream under the nomenclature of common entrance test particularly when there is only one Board in the State taking up 12th Standard Examination in Science Stream and admissions are granted at the State level. Thus, in substance, when there is no need to have a test under the nomenclature of common entrance test over and above 12th Standard Examination in Science Stream in view of the said guidelines issued by the Apex Body like

> the All India Council for Technical Education, it sounds irrational, with profound respect, as to on what basis, respondent No.1-Admission Committee has though of compelling the petitioner-Association either to take one more common entrance test or to follow common entrance test taken by the State. Hereto annexed and marked as **Exhibit "H"** is a true copy of guidelines dated 3rd November 2003 issued by the All India Council for Technical Education.

25. On going through the guidelines issued by AICTE it will become clear that the ground does not reflect the correct reading of the guidelines. The guidelines read as under:

"ALL INDIA COUNCIL FOR TECHNICAL EDUCATION,
NEW DELHI

3rd November, 2003

Guidelines for Common Entrance Test(s) for Admission to Degree level Engineering, Architecture / Planning and Pharmacy Programmes in the Country, for the academic year 2004-05, onwards.

No.F.37-3/Legal (vi)/2003 – In pursuance of the Judgment of Hon'ble Supreme Court delivered on October 31, 2002 and August 14, 2003 and in terms of Policy Framework laid down by the Ministry of HRD in the Department of Secondary and Higher

Education, Government of India vide No. F.17-18/2002-TS.I dated October 15, 2003 and in exercise of the powers conferred under Section 19(b) and 10(o) of AICTE Act, 1987 (52 of 1987), the All India Council for Technical Education (AICTE) hereby makes the following Guidelines on Common Entrance Test(s) for admission to Engineering, Architecture / Planning and Pharmacy Programmes in the country.

(1) These Guidelines are applicable to all the Institutions / Universities conducting Degree level Engineering, Architecture / Planning and Pharmacy Programmes in the country.

(2) All India basis admission to the Degree level Engineering, Architecture / Planning and Pharmacy Programmes shall be made through an All India Engineering, Architecture / Planning and Pharmacy Common Entrance Test (AIEEE), from the academic year 2004-2005 onwards.

(3) AIEEE shall be for those institutions that were holding their own entrance tests earlier and admitting all their students or certain percentage of them on all India basis.

(4) States may conduct their own common entrance test(s) for admission to institutions conducting Degree, Engineering, Architecture / Planning and Pharmacy

Programmes within their States or joining the AIEEE. State level tests shall however be restricted to fill up seats from the students of their own states only.

(5) Management quota / seats in private unaided self financing institutions shall be filled either of the common entrance tests as above or through a common entrance test conducted by an approved Agency (including Association of all colleges of a particular type in the State). This option for filling up management seats shall be exercised by the institutions before issue of prospectus and intimated to the concerned Authority.

(6) All admissions in different approved quotas shall be made strictly on the basis of inter-se merits based on common entrance tests as above. Seat allocation shall be coordinated by the State Authority in case of admissions made on All India basis.

(7) All India Engineering, Architecture / Planning and Pharmacy Common Entrance Test (AIEEE) shall be organized in a manner and as per advice of a National Advisory Board constituted by the Government.

(8) National Advisory Board shall also consider cases of institutions having special and

unique features for exemption from participation in common entrance test(s) on case-to-case basis, if their special and unique features cannot be accommodated through the Common Entrance Test(s).

(9) After the admission process is over, all institutions shall submit to the Authority concerned, the list of students admitted, along with rank number obtained by the student, the fees collected and all such particulars and details as may be required by the Authority.

(10) If a Technical Institution is found to be contravening any of the provisions of these Guidelines, the Council may withdraw it's approval, after making such enquiry as it may consider appropriate and after giving the Institution an opportunity of being heard.

(11) All the Institutions / Universities conducting Degree level Engineering, Architecture / Planning and Pharmacy Programmes shall intimate on or before 30th November, every year, to the concerned authority in the State and the Regional Office of AICTE, the number of seats that are to be filled up on the basis of Tests to be conducted by AIEEE, State Level Test and Association Test (if, any) for the following academic year.

(12) These Guidelines shall come into effect immediately.

(13) The council shall have the power to issue clarifications to remove any doubt that may arise in regard to implementation of these Guidelines.

Advisor (Administration)"

26. As can be seen from the guidelines they are applicable for academic year 2004-2005 onwards. The guidelines have been issued in pursuance of the judgments rendered by the Apex Court in the case of *T.M.A. Pai Foundtion* (supra) and *Islamic Academy of Education* (supra). Paragraph No.1 of the guidelines states that they are applicable to all institutions etc. conducting Degree Level Engineering and other specified courses in the country. Paragraph No.2 stipulates All India basis admissions shall be made through an All India Common Entrance Test. Paragraph No.4 permits States to conduct their own Common Entrance Test(s) to fill up seats from the students of their own States only.

27. Further, Paragraph No.5 of the guidelines mandates filling up of seats in private unaided self-financing

institutions: - (i) by either of the Common Entrance Tests as above i.e. either All India Test or State Level Test; (ii) through Common Entrance Test conducted by an approved agency (including Association of all colleges of a particular type in the State). It is further provided that the option shall be exercised by the institutions before issuing prospectus and the concerned authority shall be intimated in advance. What needs to be noted is that the option is only qua which of the tests the self-financing institutions will take as the basis, either All India Test or the State Level Test on the one hand, or in the alternative, a Common Entrance Test conducted by an association of similarly placed institutions. There is no option to such self-financed institution to adopt any other modality. Paragraph No.6 makes this more than clear by stating that all admissions shall be made strictly on the basis of inter-se merit-based on Common Entrance Tests as above.

28. Paragraph No.11 of the guidelines stipulates that all the institutions etc. are mandated to intimate on or before 30th November every year, to the concerned authority in the State as well as Regional Office of AICTE, the number

of seats that are to be filled up on the basis of tests to be conducted by AIEEE, State Level Test and Association Test (if any) for the following academic year.

29. On a conjoint reading of all the paragraphs it is not possible to read and equate the State Level Test with the Board examination and similarly the portion of Paragraph No.11 in parenthesis “if any”, which succeeds the phrase “Association Test” cannot be read to mean that the Association has an option to conduct or not to conduct the test. The option is limited to adopting the result of the All India Level Test or the State Level Test or conduct its own test. There is no other option available.

30. Paragraph No.10 of the guidelines stipulates that in the event a technical institution contravenes any of the provisions of the guidelines AICTE is entitled to withdraw approval after carrying out such inquiry and an opportunity of being heard. Thus the guidelines are mandatory, binding in nature.

31. Therefore, the petitioner-Association cannot be heard to state that in exercise of its fundamental right under Article 19(1)(g) of the Constitution it can ignore the

guidelines issued by AICTE as well as refuse to abide by monitoring by the Committee and adopt a basis which does not fulfill either the requirement laid down by the Apex Court or the guidelines of AICTE.

32. In the circumstances, the learned Single Judge has committed an error in upholding the contention of the petitioner-Association and equating the qualifying examination of the Higher Secondary Board with a Common Entrance Test.

33. Before parting it is necessary to record the fact that respondent No.1-Committee (the appellant herein) has not conducted itself in a manner befitting the Committee. The Association had written to the Committee in the first instance on 22nd September, 2005 and till 4th May, 2006 the Committee did not take any action. If any action has been taken, the same is not available on record. The Court expects the Committee to act promptly in such matters considering the faith reposed by the Courts, including the Apex Court, and the State Government. The Committee must not loose sight of the fact that it has been constituted in light of the directions by the Apex Court to take care of the interest of the student

community at large and its actions must be such so as to inspire confidence, not only in the student community, but the public at large made up of parents, guardians and other well-wishers of the students. All its steps must be taken well within time, in advance, and published and publicized so as to ensure that every student aspiring to be a candidate in the following academic year knows what he/she will be required to undergo for the purposes of securing admissions to a professional course. In the interest of student community at large, the Court hopes and expects the Committee to take positive steps and policy decision forthwith for the next academic year.

34. This litigation is primarily by way of one-upmanship between the petitioner-Association on one hand and the Committee and the State Government on the other hand. In the process all the parties to the litigation have lost sight of the fact that it is the student, who has no voice and/or means, who suffers for no fault of his. Even from a humanitarian angle the authorities, including the managements, are required to consider and bear in mind the unwarranted anxiety the students, parents, etc. undergo while every academic year the Courts are flooded with fruitless litigations.

35. It is necessary to record, and experience shows, that frequent changes made in the Rules/Procedure for admissions to the State aided colleges as well as unaided colleges results in unwarranted litigation and, therefore, the policy should be framed in advance at the start of the preceding academic year for the succeeding academic year and no departure should ordinarily be made once the decision is published and publicized unless there is compelling exigency.

36. For the present academic year i.e. 2006-2007, the merit list prepared by the State on the basis of 60:40 weightage to the marks obtained at HSC examinations and GUJCET shall be used as a basis by the State and the petitioner-Association for the purposes of granting admissions to the students and for next academic year, it is earnestly hoped that the State, the Committee and the petitioner-Association shall put their heads together and evolve a common methodology which is hassle free and fulfills the objective of being fair, transparent and non-exploitative as laid down by the Apex Court. It would be ideal if a Common Entrance Test is adopted as the basis for all competing students regardless of the sources of

the qualifying examinations viz. whether State Board, CBSE or ISCE instead of preparing a merit list on the percentage system adopted this year.

37. More than 25-30 authorities have been cited by all the sides, but, as most of the authorities are common and overlap, it is not necessary to enumerate the same though they have been considered while rendering this decision.

38. In the result the appeal is allowed.

39. As the main appeal is heard and disposed of, no order is required to be passed in the Civil Application and the same stands disposed of.

40. Learned counsel for the appellant prays for stay of this order for three weeks. We see no justification to stay the operation of this order. Prayer sought for is rejected.

Sd/-
[Y.R. MEENA, Actg. C.J.]

Sd/-
[D.A. MEHTA, J]

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Bhavesh*